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SUBJECT: GUIDANCE: DECEMBER 3 UNSC DEBATE ON ICTR/ICTY

¶1. (U) The Department requests that USUN draw on the points in paragraph 2 for use during the Security Council's December 3 debate on the Completion Strategies for the International Criminal Tribunal for the Former Yugoslavia and Rwanda (ICTY and ICTR).

¶2. (U) Begin points:

-- The United States commends the Prosecutors and Presidents for their work to bring perpetrators of some of the world's most heinous crimes to justice and we thank them for their assessments. We also wish to highlight the important work that tribunals' judges and staff are doing and thank them for their continued dedication to justice, especially as they prepare for the closure of the ICTY and ICTR. We recognize that an efficient closure that continues to support victims and ensures that they receive a measure of justice for these crimes requires difficult, dedicated work. We note our appreciation for the efforts of ICTR President Byron and ICTY President Robinson. We would also like to recognize the important work of Prosecutors Serge Brammertz and Hassan Jallow and Registrars Dieng and Hocking.

-- The United States reiterates the importance of creating a residual mechanism to manage the necessary functions of the Tribunals after completion of pending trials and appeals. We thank the Secretary General for his report on the administrative and budgetary aspects of a residual mechanism. This report will help decision makers to develop an effective, cost-efficient mechanism. We urge both tribunals to continue to strive to complete their work at the earliest possible date, and we thank the Security Council Working Group, chaired by Austria, for its efforts to address and resolve residual issues.

-- The Tribunals were established to identify those responsible for some of history's worst crimes and to hold those individuals accountable. We cannot lose sight of the historic importance of this task, and we must work toward establishing residual mechanisms that do not allow the 13 outstanding ICTY and ICTR fugitives to escape justice. It is essential that the individuals indicted by the ICTY and ICTR who remain at large are apprehended and brought to justice without further delay. We call on all States to fulfill their legal obligations to cooperate with the Tribunals and call on all States to take the necessary steps to ensure the apprehension of the remaining fugitives.

-- The United States wishes to highlight the need to reinforce efforts to bring ICTR fugitive Felicien Kabuga to face international justice. We note with concern that the Government of Kenya has not responded to the ICTR's requests for certain government records relating to Kabuga's assets and has not provided details to support the claim that Kabuga has left Kenya. The United States urges Kenya to act immediately on the Tribunal's recommendations and to take effective steps to deny Kabuga access to his networks of support.

-- The United States acknowledges Rwanda's desire to receive transferred cases from the ICTR, and commends the Prosecutor's support for that effort, as well as the Rwandan government's and others' work to build capacity in the Rwandan legal system to make such transfers possible. Rwanda has made significant progress in reforming its judicial sector and we welcome the recent transfer of eight individuals convicted by the Special Court of Sierra Leone to Mpanga prison in Rwanda last month. This achievement highlights Rwanda's growing capacity and commitment to meet international standards. The ability of the ICTR to transfer cases to Rwanda and other states as appropriate is an important and critical step towards meeting the Tribunal's completion strategy.

-- The United States commends States' efforts to cooperate with the ICTY, but critical steps remain to be taken. All states must fully cooperate with the ICTY; Ratko Mladic and Goran Hadzic must be arrested and transferred to the ICTY to face justice. Cooperation with the ICTY remains a fundamental obligation for all states in the region. We commend the Government of Serbia for its improved cooperation, and we urge the government of Serbia to continue to do everything in its power to locate, arrest, and transfer Ratko Mladic to the ICTY. The arrests of Mladic and Hadzic are important for the successful completion of the ICTY's mandate and for Serbia's full Euro-Atlantic integration. In terms of cooperation by the Croatian authorities, we note that Croatia has engaged in extensive efforts to respond to the Trial Chamber's order of September 2008 to deliver or engage in a credible investigation into the fate of the requested artillery documentation from Operation Storm. In our judgment those efforts have been conducted in good faith, and we believe that the Government of Croatia's latest investigation, which is continuing, is credible and represents a significant step forward in Croatia's cooperation with the ICTY. At the same time, we encourage the Croatian authorities to explore additional measures, such as using outside expertise and engaging in more aggressive investigative techniques, that might aid in the recovery of additional documents. We remain concerned about the political situation in Bosnia and Herzegovina and the divisive rhetoric that continues to be used by political leaders there. We note the critically important work that international prosecutors and judges are doing in Bosnia. International judges and prosecutors have worked tirelessly to bring justice to the victims, regardless of ethnicity.

-- We again thank the Presidents, Prosecutors, Registrars, and their staffs for their work. We recognize that the work of the tribunals remains critically important to the fight against impunity.

End points.
CLINTON